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No. 85-550

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

UNION OIL COMPANY OF CALIFORNIA,
Petitioner,
v.
SARAH M. SPAETH,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

The court of appeals in this case upheld the award of $2 million in punitive damages against petitioner Union based in substantial part on Union's participation in a state administrative proceeding. In her opposition to Union's petition for writ of certiorari, respondent does not dispute that the First Amendment gives some protection to participation in state administrative proceedings. Instead, respondent asserts that the award of punitive damages was not based upon Union's conduct before the State Corporation Commission alone and that such conduct was outside the general protection of the First Amendment because taken in "bad faith."

The first claim is entirely beside the point; the second is without any support in the record.

I. UNION'S PUNISHMENT WAS BASED IN SUBSTANTIAL PART ON ITS PARTICIPATION BEFORE THE STATE CORPORATION COMMISSION.

Throughout the proceedings below, respondent made Union's participation before the State Corporation Commission and in the subsequent appeal to the Oklahoma State Supreme Court a centerpiece of her claim that Union should be punished. Respondent now asserts that such participation was merely "an incidental, albeit equally malicious, aspect of the actual tort committed." Opposition at 18. But respondent's success in emphasizing the administrative proceeding has made it impossible at this late stage to deny the central role that such emphasis played in obtaining $2 million in punitive damages in a case where actual damages were a mere $17,542.

As we pointed out in the petition (p. 7, n. 10), the court of appeals made "clear that the fact of Union's participation in the Commission proceedings was a substantial factor in the award of punitive damages." Indeed, the portion of the court's opinion that we quoted there, and now quote in full below, gives Union's participation equal billing with drainage as the basis for affirming the $2 million punitive award on remittitur.[1] Union's appearance before the State Corporation

[1] Thus the court of appeals said (Pet. App. at 4a):

> "The defendant's conduct in maliciously allowing drainage of plaintiff's gas *and in opposing her attempts to obtain relief*, together with its net worth of three and one-third billion dollars, must be considered along with the injury inflicted, breach of an oil and gas lease implied covenant to protect against drainage. The trial court felt that the conduct of the defendant was so egregious that an award of Two Million Dollars in punitive damages was justified and necessary to punish the defendant. R. Vol. IX pp. 612-613. We cannot say that the trial court abused its discretion." (Emphasis added.)

Commission also figured prominently in the court of appeals recitation of the facts that it asserted showed a "reckless and wanton disregard by Union of Spaeth's rights" in its prior decision remanding the case for a remittitur with respect to the punitive damages. *Id.* at 7a, 12a. Counsel for respondent repeatedly emphasized each detail of Union's appearances before the Commission and state Supreme Court throughout the trial and closing argument to the jury. And even the district court memorandum with respect to respondent's equitable claim for lease cancellation (on which respondent places such great emphasis) expressly relies upon the fact that Union "vigorously opposed plaintiff's own efforts to acquire such permission for the drilling of the additional well, both in the Oklahoma Corporation Commission and in the Oklahoma Supreme Court, in which court she prevailed." [2]

Union does not and need not deny that factors other than its appearance in state administrative and judicial proceedings may have played some unspecified role in the award of punitive damages against it. The facts as presented in Union's petition, however, show that such appearances at the very least played a large part in that

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[2] Contrary to respondent's implication (Opp. at 4), the memorandum of the district court of March 17, 1981 (printed as App. A of the Opposition) did not set "forth the express findings of fact and conclusions of law of the district court" with respect to the punitive damages issue presented by this case. Instead, that memorandum set forth the district court's findings of fact and conclusions of law with respect to the issue of lease cancellation alone, which is not in issue here.

The punitive damages which are in issue here were awarded by the jury and are reflected in the final judgments of the district court initially and on the remittitur which are printed as Appendices C and D of the petition pursuant to Rule 21.1.(k). Those judgments expressly mention the memoranda which respondent has printed as Appendices A and B of her Opposition.

award. Nothing in respondent's arguments shows anything to the contrary. The fact that a party was severely punished in substantial part because of its exercise of First Amendment rights is no less unconstitutional than punishment exclusively for such reasons. Indeed, a general verdict (such as here) cannot stand where one of the possible alternative grounds supporting it is unconstitutional even if the same result could have been reached without violating the Constitution.[3]

II. NOTHING IN THE RECORD SUPPORTS RESPONDENT'S CLAIM THAT UNION'S PARTICIPATION BEFORE THE COMMISSION WAS IN BAD FAITH.

Respondent also asserts that "Union Oil's conduct in opposing Spaeth before the Commission was found to be without merit and in bad faith and to be unsupported by any substantial evidence." Opp. at 19. Respondent does not identify the tribunal that made any such finding, much less give any citation to the decision. Insofar as respondent is referring to the fact that the position that Union supported before the Corporation Commission ultimately was rejected by the Oklahoma Supreme Court, she is correct that it was ruled to be "without merit" just the way that any losing cause can be said so to have been found. But surely the First Amendment protection for the right of petition is not restricted to the winning side. Rather, as respondent herself apparently recognizes, to fall outside First Amendment protection parties such as Union would have to be found to have engaged in "baseless litigation"—a claim that here is unsupportable on its face, given the fact that Union actually prevailed before the Commission in the first instance.

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[3] *See Williams v. North Carolina*, 317 U.S. 287, 292 (1942).

CONCLUSION

For the foregoing reasons, together with those presented in Union's Petition for Certiorari, this Court should grant certiorari to review the decision of the U.S. Court of Appeals for the Tenth Circuit in this case.

Respectfully submitted,

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